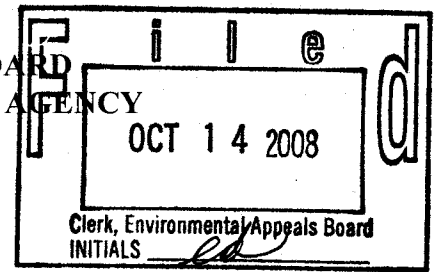


BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.



_____)
In re: _____)
Desert Rock Energy Company, LLC _____)
PSD Permit No. AZP 04-01 _____)

PSD Appeal Nos. 08-03, 08-04,
08-05 & 08-06

ORDER GRANTING MOTION TO PARTICIPATE, MOTION TO FILE
AMICUS CURIAE BRIEF, AND MOTION FOR EXTENSION OF TIME
TO FILE RESPONSES

On July 31, 2008, the United States Environmental Protection Agency, Region 9 (“Region”) issued a prevention of significant deterioration (“PSD”) permit (number AZP 04-01) (the “Permit”) to Desert Rock Energy Company, LLC (“Desert Rock”) for the construction of a new 1500-megawatt (MW) coal-fired electric generating facility to be located approximately 25 miles southwest of Farmington, New Mexico. The Region is the permitting authority for this permit because the proposed facility will be located within the Navajo Indian Reservation and the Navajo Nation does not have an EPA-approved tribal PSD permitting program.

The Board received four petitions for review of the Permit: one from Diné Care, Environmental Defense Fund, Grand Canyon Trust, Natural Resources Defense Council, San Juan Citizens Alliance, Sierra Club and WildEarth Guardians (collectively “NGO Petitioners”), see Petition for Review, Motion for Extension of Time to File Supplemental Brief, and Motion for Stay of Certain Issues Pending the Board’s Decision in *In re Deseret Power Electric Cooperative* (PSD Appeal No. 07-03) (received Aug. 14, 2008) (“NGO Pet.”); one from

the State of New Mexico (“State”), *see* State of New Mexico’s Petition for Review and Request for Oral Argument (received Aug. 15, 2008) (“N.M. Pet.”); one from the Center for Biological Diversity, *see* Petition for Review (received Sept. 2, 2008); and one from Ms. Leslie Glustrom, *see* Petition for Review of Desert Rock Energy Air Permit PSD Permit AZP 04-01 (received Sept. 2, 2008). Two of the petitioners, the State and the NGO Petitioners, requested additional time to file supplemental briefs in support of their petitions for review. On August 21, 2008, the Board issued an order granting a 30-day extension of time – until October 2, 2008 – to those two petitioners to file their supplemental briefs. *See* Order Granting Desert Rock’s Mot. To Participate, Granting a 30-Day Extension of Time, and Denying a Stay of Briefing on Certain Issues at 3. The Board also granted a motion from Desert Rock requesting that it be allowed to participate. *Id.* At 3.

The State and the NGO Petitioners filed their supplemental briefs on October 2, 2008. On the same day, the National Parks Conservation Association (“NPCA”) submitted a motion requesting leave to file an amicus curiae brief as well as the amicus brief.¹ Mot. Of NPCA for Leave to File Br. as Amicus Curiae in Supp. Of Pet. Of NGO Pet’rs; NPCA Amicus Curiae Br. in Supp. Of Pet. Of NGO Pet’rs (“NPCA Br.”). On October 9, 2008, the Board received a motion from Diné Power Authority (“DPA”) requesting leave to participate in the proceedings. DPA states that it is an instrumentality of the Navajo Nation and was a sponsor and co-developer of the Desert Rock plant. Mot. To Participate at 1-2. The Board also received from the Region

¹ The NPCA brief focuses solely on concerns regarding the Permit’s impacts on visibility, an issue already raised by the State of New Mexico and the NGO Petitioners in their petitions. *Compare* NPCA Br. at 2-4 *with* NGO Pet. At 9 *and* N.M. Pet at 5. For this reason and because of its timely filing, the Region does not oppose NPCA’s motion.

on October 9, 2008, a motion for extension of time to respond to the petitions and supplemental briefs. In its motion, the Region requested an additional 30 days to respond in light of the extensive volume of argument submitted in the various petitions (over 450 pages). Mot. for Extension of Time to Response to Pets. And Suppl. Brs. At 1, 3. The Region also requested that this extension of time apply to the responses of the two other parties that have sought to participate in defense of the Region's permitting decision, the permittee and DPA. *Id.* At 5.

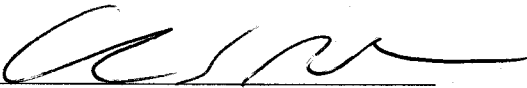
The Board hereby GRANTS NPCA's motion for leave to file an amicus curiae brief (and accepts the brief that has already been submitted), GRANTS DPA's request to participate, and GRANTS the Region's motion for a thirty-day extension of time. Accordingly, the Region, Desert Rock, and DPA are hereby ORDERED to file any response to the petitions, supplemental briefs, and amicus curiae brief no later than December 3, 2008.

So ordered.

Dated: 10/14/08

ENVIRONMENTAL APPEALS BOARD

By: _____



Edward E. Reich
Environmental Appeals Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Granting Motion to Participate, Motion to File Amicus Curiae Brief, and Motion for Extension of Time to File Responses in the matter of Desert Rock Energy Company, LLC, PSD Appeal Nos. 08-03, 08-04, 08-05, & 08-06 were sent to the following persons in the manner indicated:

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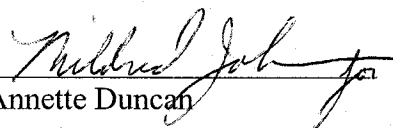
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Dated: OCT 14 2008


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Secretary